

Introduced by Senator Hueso

February 27, 2015

An act to amend Section 1701.1 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as introduced, Hueso. Public Utilities Commission: proceedings: ex parte communications.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature, and to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process.

The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. The act regulates communications in hearings before the commission and defines "ex parte communication" to mean any oral or written communication

between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law requires the commission, by regulation, to adopt and publish requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission's Rules of Practice and Procedure define a "decisionmaker" as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner's personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include commissioners, each advisor to a commissioner, and an administrative law judge assigned to the proceeding, thereby making the restrictions on ex parte communications applicable to an advisor to a commissioner in a ratesetting proceeding.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1701.1 of the Public Utilities Code is amended to read:

1701.1. (a) The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision. If that decision is not appealed to the commission within that time period it shall not be subsequently subject to judicial review. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish ~~regulations~~ *rules* regarding ex parte communication on case categorization issues.

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

~~(4)~~

(d) (1) "Ex parte communication," for purposes of this article, means any oral or written communication between a decisionmaker

1 and a person with an interest in a matter before the commission
2 concerning substantive, but not procedural issues, that does not
3 occur in a public hearing, workshop, or other public proceeding,
4 or on the official record of the proceeding on the matter. “Person
5 with an interest,” for purposes of this article, means any of the
6 following:

7 (A) Any applicant, an agent or an employee of the applicant,
8 or a person receiving consideration for representing the applicant,
9 or a participant in the proceeding on any matter before the
10 commission.

11 (B) Any person with a financial interest, as described in Article
12 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
13 Government Code, in a matter before the commission, or an agent
14 or employee of the person with a financial interest, or a person
15 receiving consideration for representing the person with a financial
16 interest.

17 (C) A representative acting on behalf of any civic,
18 environmental, neighborhood, business, labor, trade, or similar
19 organization who intends to influence the decision of a commission
20 member on a matter before the commission.

21 ~~The~~
22 (2) *The* commission shall by ~~regulation~~ *rule* adopt and publish
23 a definition of decisionmakers and persons for purposes of this
24 section, along with any requirements for written reporting of ex
25 parte communications and appropriate sanctions for noncompliance
26 with any rule proscribing ex parte communications. ~~The regulation~~
27 *rules* shall provide that reportable communications shall be reported
28 by the party, whether the communication was initiated by the party
29 or the decisionmaker. *The definition of decisionmakers shall*
30 *include, but is not limited to, commissioners, each advisor to a*
31 *commissioner appointed pursuant to Section 309.1, and an*
32 *administrative law judge assigned to the proceeding.*
33 Communications shall be reported within three working days of
34 the communication by filing a “Notice of Ex Parte
35 Communication” with the commission in accordance with the
36 procedures established by the commission for the service of that
37 notice. The notice shall include the following information:

38 (i)

1 (A) The date, time, and location of the communication,~~and~~
2 whether it was oral, written, or a ~~combination~~. *combination, and*
3 *the communications medium utilized.*

4 ~~(ii)~~

5 (B) The identity of the recipient and the person initiating the
6 communication, as well as the identity of any persons present
7 during the communication.

8 ~~(iii)~~

9 (C) A description of the party's, but not the decisionmaker's,
10 communication and its content, to which shall be attached a copy
11 of any written material or text used during the communication.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.